



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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TTY 711 or 800-833-6388 (For the Speech or Hearing Impaired)

September 9, 2005

REGISTERED MAIL

Ben Brown
Department of Transportation
Northwest Region
P.O. Box 330310
Seattle, WA 98133-9710

RE: Water Quality Certification Order # 2690 and Coastal Zone Management consistency determination for Corps Public Notice 200401457 for roadway improvements on SR 543 from I-5 to the International Border in Whatcom County, Washington

On December 6, 2004, the Washington State Department of Transportation submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the Federal Clean Water Act for the proposed SR 543 from I-5 to International Border. An amended JARPA was then submitted on August 18, 2005. The project proposes to improve the roadway capacity by lowering the current grade of SR 543 to pass under D Street, constructing a ramp connection between SR 543 and D Street, and widening the roadway. In addition, work includes four developing stormwater detention ponds and constructing a wetland mitigation site. The U.S. Army Corps of Engineers issued the project's public notice on January 25, 2005.

On behalf of the State of Washington, Ecology certifies that the work proposed in the amended JARPA and the public notice complies with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order.

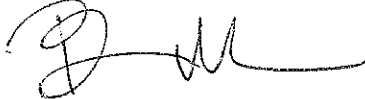
On July 6, 2005, Washington Department of Transportation submitted to Ecology a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that this work is consistent with the CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.



This letter also serves as a State response to the Corps of Engineers' Public Notice. The enclosed Order may be appealed by following the procedures described in the Order.

If you have any questions, please contact Rebecca Ponzio, the Federal Permit Manager for this project, at (425) 649-7181 or rpon461@ecy.wa.gov.

Sincerely,



Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

BM:rp:mw
Enclosure

cc: Kim Harper, Ecology
Jerry Shervey, Ecology
Jack Kennedy, Corps of Engineers
Jim Fraser, Department of Fish & Wildlife
Pat Klavas, Department of Fish & Wildlife
John Maas, Department of Transportation
Christina Martinez, Department of Transportation
~~Nina Roscow, Department of Transportation~~

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RP

e-cc: Penny Keys, Ecology
Loree Randall, Ecology

IN THE MATTER OF GRANTING)	ORDER # 2690
A WATER QUALITY)	Corps References No. 200401457
CERTIFICATION TO)	Construct road improvements
Washington State Department of)	on SR 543, from MP 0.20 to
Transportation in accordance with)	MP 1.09, lower road profile, widen
33 U.S.C. 1341 (FWPCA § 401),)	road, and construct stormwater
RCW 90.48.120, RCW 90.48.260,)	facilities and a wetland mitigation
and Chapter 173-201A WAC)	site, located in Whatcom County, Washington.

TO: Washington State Department of Transportation
 Attn: Ben Brown
 Seattle, WA 98133-9710

On December 6, 2004, the Washington State Department of Transportation submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Washington State Department of Transportation then submitted an amended JARPA on August 18, 2005 to update the wetland impact information. The original request for certification was made available for public review and comment through the Corps of Engineers' Public Notice No. 200401457 on January 25, 2005.

The proposed project is located on SR 543 between Boblett Street and D Street in Section 31, Township 41N, Range 1E and Section 6, Township 40N, Range 1E, within the city of Blaine in Whatcom County, Washington. The project entails conducting road improvements on SR 543 (MP 0.20 to 1.09) from I-5 to the International Border. Road improvements include lowering the current grade of SR 543 to pass under D Street, constructing a ramp connection between SR 543 and D Street, widening the southbound roadway for two lanes north of Boblett Street and the northbound roadway for two lanes north of Boblett Street and also north of H Street. In addition, four stormwater detention ponds, along with swales and ditches, will be constructed to collect and treat runoff from the road. This work will result in 2.33 acres of permanent impacts to five wetlands that are adjacent to SR 543. Compensatory mitigation for the wetland impacts will occur at the southeast corner of the intersection of Sweet road and Stadsvold Road in Sections 9 and 10, Township 40N, Range 1E in Blaine, Whatcom County, Washington. Wetland mitigation will entail creating 2.99 acres of new wetland, enhancing 1.28 acres of degraded wetland, and enhancing 2.97 acres of upland buffer.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306, and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and other requirements of state law; and,
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the project as proposed and conditioned will not violate applicable water quality standards and other applicable requirements of state law. Therefore, in view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260, and Chapter 173-201A WAC, Certification is granted to the Washington State Department of Transportation (WSDOT) Northwest Region subject to the following conditions:

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the Washington State Department of Transportation (WSDOT) Northwest Region, and its agents, assignees, and contractors.
2. All submittals required by conditions of this Order shall be sent to Ecology's Northwest Regional Office, Attn: Federal Permit Coordinator - MAPT, 3190 -- 160th Avenue SE, Bellevue, WA 98008-5452, with Order # 2690 displayed. Should you have questions regarding submittals, call the Federal Permit Coordinator at 425-649-7181.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on December 6, 2004 and the amended JARPA received on August 18, 2005. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the amended August 18, 2005 JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Ecology will determine within thirty (30) days of receipt of an updated JARPA if a modification of this Order is required.
5. This Order shall be withdrawn if the U.S. Army Corps of Engineers does not issue a 404 permit. It shall also be withdrawn if the project or its purpose is revised in such a manner that the U.S. Army Corps of Engineers or Ecology determines that the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.

6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
8. The Applicant shall provide access to the project and mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. The Applicant's representative shall have adequate authority to ensure proper implementation of the Temporary Erosion and Sediment Control Plan (TESC Plan), as well as immediate corrective actions necessary because of changing field conditions. If the Applicant's representative issues a directive necessary to implement a portion of the TESC or to prevent pollution to waters of the state, all personnel on site, including the construction contractor and the contractor's employees, shall immediately comply with this directive.
10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to comply with the state's water quality laws. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g. violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

1. The wetlands within the project vicinity are Category IV wetlands based on the Washington State Department of Ecology 2004 Rating System and are waters of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (173-204WAC). Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

C. Timing:

1. This Order is valid until all requirements in this document have been met.

D. Notification Requirements:

1. Notification shall be made to Ecology's Federal Permit Manager - MAPT at 425-649-7181, Fax 425-649-7098, or mail 3190 – 160th Avenue SE, Bellevue, WA 98008-5452 for the following activities:

- At least 10 days prior to the pre-construction meeting;
- At least 10 days prior to the onset of initiating work on site;
- At least 10 days prior to construction of the mitigation site;
- At least 10 days prior to initial in-water work activity; and
- Immediately following a violation of the state water quality standards or conditions of this Order.

NOTE: These notifications shall include the applicant's name, project name, project location, the number of this Order, contact name, and contact's phone number.

2. The Applicant shall ensure that all appropriate Project Engineers and Contractors at this project site and/or mitigation site have read and understand all relevant conditions of this Order and all permits, approvals, and documents referenced in the Order. The Applicant shall provide Ecology with a signed statement (see Attachment A for an example) from each Project Engineer and Contractor that shows that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology no less than 10 days before construction begins at the project and/or mitigation sites.

E. Monitoring & Reporting:

1. The Applicant shall submit a copy for review of the Temporary Erosion and Sediment Control (TESC) Plan for both the roadway construction and the wetland mitigation site construction thirty (30) days prior to beginning construction. The TESC plan shall include the following information:
 - Name and phone number of person responsible for implementing the plan;
 - Best management practices (BMPs) anticipated to be implemented;
 - Frequency of BMP inspections; and
 - Contingency plan in the event of adverse weather conditions or other foreseeable undesirable conditions.

F. Construction, Equipment Staging and Maintenance:

Construction Conditions:

1. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Wetlands, streams, buffers, and other sensitive areas that are to be protected from disturbance shall be marked with orange construction fencing in order to be clearly visible to equipment operators. Equipment shall enter and operate only within the delineated clearing limits, corridors, and stockpile areas. This condition applies to the project site as well as to all material source/waste sites on which sensitive areas occur.
2. Effective sediment control BMPs (e.g., filter or silt fences, hay bales, etc.) that are intended to trap sediment on site shall be in place before starting project construction and shall be maintained throughout construction.
3. If any wetlands, wetland buffers, or stream buffers are temporarily impacted by the project, these areas shall be protected from erosion as specified in Section F, Condition 7 of this Order. If erosion control seed mixes are used in these areas, they shall consist of native species unless otherwise approved by modification to this Order. All disturbed areas shall be replanted with native vegetation within the first appropriate planting season after construction is completed. The Applicant shall stabilize all exposed and unworked soils by applying effective BMPs that protect the soil from erosive forces. All areas disturbed or newly created by the project construction shall be stabilized as soon as possible to prevent erosion and the Applicant shall comply with the TESC plan.
4. The TESC plan shall apply to both the project site and the wetland mitigation site.
5. Temporary impacts to vegetation shall be limited to the amount necessary for construction. Bare soils in these areas shall be adequately protected from erosion for the duration of the project and seeded with suitable erosion control seed mix within 7 days after project completion.
6. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
7. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
8. Erosion control devices (plastic sheets, straw, fiber mats, etc.) suitable to prevent exceedance of state water quality standards shall be in place and maintained throughout construction in order to prevent erosion. The Applicant shall stabilize all exposed and unworked soils by applying effective BMPs that protect the soil

from the erosive forces. The Applicant shall stabilize the disturbed soils so that from October 1 through April 30 no soils shall remain exposed and unworked for more than 2 days; and from May 1 to September 30, no soils shall remain exposed and unworked for more than 7 days.

9. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project for site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
10. All construction debris, excess sediment and other waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
11. Turbid dewatering water shall not be discharged directly to waters of the state. Turbid dewatering water shall be routed to an upland area for on-site settling or off-site disposal. The discharge from the upland areas shall meet the water quality criteria at the point of discharge into the surface waters. The Applicant shall notify Ecology's Federal Permit Manager before the use of off-site disposal methods.
12. Clean de-watering water that have been tested and confirmed to meet water quality standards may be discharged directly to waters of the state. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
13. Concrete process water shall not enter waters of the state. All concrete shall be completely cured prior to coming into contact with state waters. Any contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and infiltrated, or disposed of appropriately with no possible entry to state waters.

Equipment Staging & Maintenance

14. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology before construction begins.
15. Equipment used during construction shall be serviced, fueled, and maintained on upland areas in order to prevent contamination of surface waters. All fueling areas shall be provided with adequate spill containment. Fueling equipment and vehicles within 50 feet of state waters and wetlands is not allowed.

16. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
17. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
18. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.
19. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.
20. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

G. Wetland Mitigation Conditions:

1. Impacts to aquatic resources shall be mitigated as described in the *Final Wetland Mitigation Report, SR 543 I-5 to International Boundary Road Widening and Border Crossing Improvements Project* (hereafter referred to as "mitigation plan"), prepared by Washington State Department of Transportation, dated August 17, 2005.
2. The mitigation project shall result in the creation of a minimum of 2.99 acres of forested/scrub-shrub wetland and the enhancement of 1.28 acres of forested/scrub-shrub wetland.
3. Any changes beyond minor modifications to the mitigation plan shall be submitted in writing to Ecology's Federal Permit Manager for approval.

Mitigation Construction

4. Compensatory mitigation construction and installation shall occur prior to, or concurrently with, project impacts to wetlands.
5. Appropriate and effective BMPs shall be installed on the mitigation site prior to commencing earthwork so as to minimize erosion, turbidity, and other water quality impacts to the unnamed creek on the site.
6. All excess excavated material from the mitigation site shall be disposed of in an appropriate location outside of sensitive areas and their buffers and shall be

stabilized or contained so as to prevent its entry into waters of the state.

7. No materials shall be stockpiled within the wetlands or streams on the mitigation site at any time.
8. Appropriate BMPs shall be implemented to minimize track-out to roads during construction at the mitigation site.
9. All areas that have been exposed or disturbed on the mitigation sites shall be stabilized within seven (7) days of completion of grading to prevent erosion by using mulch or equivalent such as seeding with a suitable erosion control seed mix consisting of native grasses and forbs.
10. Upon completion of grading on the mitigation sites, and prior to planting, the applicant shall provide written confirmation to Ecology that the finished grades are consistent with the mitigation plan or other subsequent Ecology-approved modifications to grading plans (e.g. signed letter or memo from the surveyor, wetland biologist, or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan).
11. The temporary crossing of the unnamed creek, and the associated temporary access road on the mitigation site, shall be removed following completion of construction of the mitigation site and the affected areas restored as specified in the mitigation plan. No access road or clearing for an access route shall be installed or maintained following completion of planting the site without written permission from Ecology.
12. An as-built report documenting the final design of the mitigation site shall be prepared when the mitigation site is completed. The report shall include the following:
 - final site topography with site boundaries clearly marked;
 - dates of implementation, including dates of grading, planting, and final completion;
 - plan sheets showing what plants were installed including species, densities, sizes, approximate locations of plants, and plant sources;
 - habitat features (snags, large woody debris, etc) and their locations if any;
 - other plan features;
 - planned locations of sampling and monitoring sites, if known;
 - photos documenting baseline conditions (mark photo points on as-built plan);
 - any changes to the plan that occurred during construction -- include the problems that were encountered, what was done to correct them, and reasons for the changes;
 - any follow-up actions if needed and a schedule for those actions.
 - responsible parties (designer, construction contractors, planting contractor) and whether a qualified wetland professional or other responsible party was on-site during construction.
13. The as-built report shall be sent to Ecology's Federal Permit Manager within 180 days of construction and planting completion. If plants are installed more than

180 days after construction of the mitigation site, or planting is to be sequenced over time, two reports shall be submitted: 1) a brief note on the construction phase summarizing any changes from the mitigation plan and submitted within 180 days of completion of grading, and 2) a final as-built report to be prepared after the planting is completed.

Mitigation Monitoring & Maintenance

14. All plantings at the mitigation site shall be watered and otherwise maintained as necessary to meet performance standards as stated in the mitigation plan.
15. A temporary irrigation plan for the mitigation site shall be sent to Ecology's Federal Permit Manager at least 30 days prior to completion of construction of the mitigation site.
16. When needed to meet the performance standards stated in the mitigation plan, dead or dying plants shall be replaced during the first available planting season with the same species or a native plant alternative that is appropriate for the location. The species, numbers and approximate locations of all replanted material shall be noted in the subsequent monitoring report.
17. The Applicant shall comply with the most current NPDES permits that apply to WSDOT for Aquatic Noxious Weed Control if herbicides are selected to control invasive species at the mitigation sites. Methods used in areas within 20 feet of creeks shall be limited to localized application such as backpack sprayer or hand wicking. Application of herbicides shall occur only in dry weather.
18. Monitoring of the wetland mitigation sites will occur for a minimum of 10 years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. If a performance standard for monitoring years 1 through 7 is not met, the Applicant shall present to Ecology the reasons for non-attainment and shall submit for approval a proposed plan of action to resolve the problem. Ecology will determine whether remedial actions should be taken, additional wetland mitigation is needed, or the performance standard should be adjusted. If, at monitoring year 10, all required performance standards have not been met, then Ecology may require additional monitoring and/or additional wetland mitigation area.
19. Monitoring reports shall be prepared for years 1, 2, 3, 5, 7 and 10 and sent to Ecology's Federal Permit Manager. If only an informal site check is conducted in year 2, then a brief summary of the findings shall be submitted following the site visit.
20. Any changes to the wetland monitoring plan must be approved in writing by Ecology.

H. Emergency/Contingency Measures Conditions:

1. The Applicant shall develop a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall comply with WSDOT's Instructional Letter 4055.00 Environmental Compliance Assurance Procedure for Construction projects and Activities (March 10, 2003) and immediately take the following actions:
 - Cease operations at the location of the violation;
 - Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage;
 - In the event of finding distressed or dying fish, collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant receives further instructions from Ecology. Ecology may require analyses of these samples before allowing the work to resume;
 - In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible. This work shall take precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - Immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000 and Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
3. If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Northwest Region Regional Spill Response Office at 425-649-7000.

Appeal Process:

Any person aggrieved by Order # 2690 may obtain review thereof by appeal. Pursuant to Chapter 43.21B RCW, a person can appeal this Order to the Pollution Control Hearings Board within thirty (30) days of the date of receipt of this Order.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:
Washington Pollution Control Hearings Board
4224- 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903, Lacey, WA 98504-0903.

Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
P.O. Box 47608, Olympia, WA 98504-7608

In addition, please send a copy of your appeal to:
Federal Permit Appeal Coordinator
Department of Ecology
P.O. Box 47600, Olympia, WA 98504-7600.

*For additional information see Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated Sept 9, 2005 at Olympia, Washington



Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington